

**United States Department of Labor
Employees' Compensation Appeals Board**

L.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ozark, AL, Employer**

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**Docket No. 08-1307
Issued: October 20, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 26, 2008 appellant, through her attorney, filed a timely appeal from a January 23, 2008 merit decision of the Office of Workers' Compensation Programs terminating her compensation and entitlement to medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective January 23, 2008 on the grounds that she had no further disability causally related to her July 2, 2004 employment injury; and (2) whether the Office properly terminated authorization for medical benefits effective January 23, 2008.

FACTUAL HISTORY

On July 12, 2004 appellant, then a 56-year-old rural carrier, filed a claim alleging that on July 2, 2004 she sustained injuries when she was struck by lightning while in her vehicle. She stopped work on July 8, 2004. The Office accepted the claim for headaches, syncope and post-

traumatic stress disorder (PTSD). Appellant returned to limited-duty employment on August 13, 2004 and to her regular duties on July 13, 2006. She stopped work on July 6, 2007. The Office paid appellant compensation on the periodic rolls beginning July 6, 2007.

On July 12, 2007 the Office referred appellant to Dr. Gordon J. Kirschberg, a Board-certified neurologist, and Dr. David D. Harwood, a Board-certified psychiatrist, for second opinion examinations. In a form report dated July 17, 2007, Dr. Robert J. Kreutzmann, appellant's attending physician Board-certified in preventive medicine, diagnosed a PTSD-related problem and checked "yes" that her condition was caused or aggravated by employment. He provided as a rationale that her symptoms increased in severity when she was exposed to work. Dr. Kreutzmann opined that appellant was totally disabled beginning July 2, 2007. In form reports dated July 31 and August 13, 2007, he provided similar findings and opined that she remained disabled from employment.¹

In a report dated August 30, 2007, Theron M. Covin, Ed.D. and licensed professional counselor, discussed appellant's history of injury and found that she was unable to work beginning June 2007 due to PTSD resulting from the July 2004 lightning strike.

On October 17, 2007 a nurse assigned to appellant's case requested that Dr. Kreutzmann review her synopsis of their October 12, 2007 meeting. She related that appellant had increased anxiety and panic attacks subsequent to her work injury with a decrease on intelligence testing and difficulties with organization. The nurse indicated that an electroencephalogram (EEG) showed "neurological damage from the lightning strike" and listed the diagnoses as PTSD with anxiety and panic disorder and seizure disorder. She requested that Dr. Kreutzmann defer an opinion on work restrictions to Dr. Covin and Dr. Kasserwani. Dr. Kreutzmann concurred with the nurse's synopsis.

On November 5, 2007 Dr. Harwood discussed appellant's history of being struck by lightning while delivering mail. He reviewed her current symptoms of poor concentration, crying spells, mood swings, irritability and fluctuations in energy levels. Dr. Harwood noted that appellant also had various other medical problems, including rheumatoid arthritis and bowel problems. He diagnosed moderate, chronic panic disorder. Dr. Harwood stated that appellant "is okay to return to work but becomes anxious at that prospect." He opined that appellant required continued medical treatment for her anxiety. In response to whether her PTSD had resolved, Dr. Harwood stated, "Yes, it is medically probable that the injury that occurred on July 2, 2004 has resolved and [appellant's] current condition is the result of nonrelated factors. She has several medical issues." He found that appellant could work for eight hours a day without psychiatric limitations.

On November 6, 2007 Dr. Hassan Kesserwani, a Board-certified neurologist, addressed her history of recurring headaches after lightning struck her left arm while she manipulated a scanner. Appellant experienced constant mild headaches and severe headaches with nausea, photophobia and vomiting every other week. Dr. Kesserwani diagnosed episodic migraines, polypharmacy and anxiety. He opined that it was not possible to determine whether her

¹ The record contains accompanying chart notes from Dr. Kreutzmann listing his findings on examination.

migraines were causally related to the lightning strike. Dr. Kesserwani found that appellant could work from a neurological standpoint.

In a December 17, 2007 report, Dr. Kirschberg discussed appellant's complaints of headaches following a July 2, 2004 lightning strike while sitting in her vehicle. Appellant had periodic severe headaches with nausea, vomiting, phono and photophobia and four blackouts following the July 2, 2004 lightning strike. Dr. Kirschberg noted that appellant had normal results on intracranial testing.² He related:

"Therefore, in answer to your specific questions, [appellant's] complaints subjectively far outweigh objective findings and I believe that all her symptoms such as headache and even syncope which she says has stopped since she has been on Topamax are related to psychological factors, possibly post traumatic stress disorder, possibly other psychological factors. She did provide a concerted effort throughout this evaluation and as stated, again the residuals of her work injury seem to be subjective complaints consistent with headaches, anxiety, depression and I can find no definite organic neurological dysfunction."

Dr. Kirschberg found that appellant could work full time without restrictions from a neurological point of view.³

On December 21, 2007 the Office notified appellant that it proposed to terminate her compensation and authorization for medical treatment on the grounds that she had no further employment-related disability or condition. By decision dated January 23, 2008, it finalized its termination of appellant's compensation and authorization for medical treatment effective that date.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained headaches, syncope and PTSD causally related to a June 2, 2004 work injury when she was struck by lightning. Appellant stopped work

² He noted that a Doppler study showed stenosis of the right carotid but found that this would not be due to her employment injury.

³ On October 12 and November 29, 2007 Dr. Kreutzmann listed findings on examination and refilled medications.

⁴ *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

on June 8, 2004 and returned to work with restrictions on August 13, 2004. She resumed her usual employment on July 13, 2006 but stopped work on July 6, 2007. The Office placed appellant on the periodic rolls.

The Board finds that the Office has not met its burden of proof to terminate appellant's compensation benefits for the accepted conditions of headaches, syncope and PTSD.⁶ The Office referred appellant for second opinion examinations. On November 5, 2007 Dr. Harwood, a Board-certified psychiatrist, discussed appellant's work injury and reviewed her current symptoms. He diagnosed panic disorder and found that she could resume work. Dr. Harwood asserted that appellant's PTSD due to her July 2, 2004 injury had resolved and that her current condition was not related to employment. He opined that she could work full time without restrictions. Dr. Harwood, however, did not explain why he believed that appellant's accepted condition of PTSD had resolved. While he made statements regarding disability and causal relationship that were clear and unequivocal, he failed to offer adequate medical reasoning in support of his conclusions.⁷ The certainty with which Dr. Harwood expressed his opinion cannot overcome the lack of medical rationale.⁸ He did not reference any findings on examination as support for his opinion or otherwise explain his conclusions. As Dr. Harwood did not sufficiently explain why the appellant had no further residuals of her PTSD, his opinion is insufficient to constitute the weight of the medical evidence and meet the Office's burden of proof to find that appellant had no further condition or disability causally related to the accepted condition of PTSD.

On December 17, 2007 Dr. Kirschberg, a Board-certified neurologist, noted that appellant complained of headaches following a July 2, 2004 lightning strike. Subsequent to the injury, appellant experienced periodic severe headaches with nausea and four blackouts. Dr. Kirschberg found that appellant's headaches were "more likely part of a post[-]traumatic stress disorder than anything else" and noted that she had normal results on intracranial testing. He attributed all of her symptoms, including the headaches and syncope, to psychological factors. Dr. Kirschberg found that appellant had only subjective residuals of her employment injury and asserted that he found no objective evidence of "organic neurological dysfunction." He determined that she could work full time with no neurological limitations. The Board finds that Dr. Kirschberg's report, which is well rationalized and based on a complete and accurate factual background, supports that appellant has no neurological condition due to her accepted employment injury. His opinion, however, is insufficient to show that she has no further

⁶ In form reports dated July 17 and 31 and August 13, 2007, Dr. Kreutzmann, Board-certified in preventive medicine, diagnosed a PTSD-related problem and checked "yes" that appellant's condition was caused or aggravated by employment. Dr. Kreutzmann, however, is not a specialist in the appropriate field of psychology or neurology and thus his reports are of diminished probative value. See *Beverly A. Spencer*, 55 ECAB 501 (2004). The record also contains reports from Dr. Covin; however, these reports are of no probative value as a licensed professional counselor is not a physician as defined under the Act.⁶ In a report dated November 6, 2007, Dr. Kesserwani noted her history of an employment injury and resulting symptoms. He diagnosed migraines, polypharmacy and anxiety. Dr. Kesserwani asserted that it was impossible to determine whether the migraines were causally related to the lightning strike. He found that appellant could resume work from a neurological standpoint. As Dr. Kesserwani did not provide a definite opinion on causal relation, his report is of little probative value.

⁷ See *Elaine Sneed*, 56 ECAB 373 (2005).

⁸ See *Willa M. Frazier*, 55 ECAB 379 (2004).

disability due to the accepted employment-related conditions of headache and syncope from a psychological standpoint. Consequently, the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation for the accepted conditions of headache, syncope and PTSD.⁹

CONCLUSION

The Board finds that the Office failed to meet its burden to terminate compensation for the accepted condition of PTSD, headache and syncope.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 23, 2008 is reversed.

Issued: October 20, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ In view of the Board's findings that the Office failed to meet its burden of proof to terminate compensation, the issue of whether the Office properly terminated authorization for medical benefits is moot.